IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 72/2004 M/S

Smt. Rakhi …… Petitioner

Versus

Judge, Family Court, Dehradun and other ……Respondents

Hon'ble Irshad Hussain, J.

Heard Sri Alok Mehra learned counsel for the petitioner and Sri Ramji Srivastava learned counsel for the respondent no.2.

By means of this writ petition, the propriety of the impugned orders dated 2.6.2003 and 5.2.2004 passed by the learned Principal Judge, Family Court, Dehradun has been questioned. The respondent no.2- Mukul Goel had filed a suit for dissolution of the marriage in which the petitioner-wife sought an order in her favour regarding interim maintenance and expenses of the litigation as contemplated under Section 24 of the Hindu Marriage Act, 1955. Initially, the respondent no.2-husband did not contest the proceeding in this regard and by an order dated 29.7.2002 the learned Principal Judge, Family Court granted a sum of Rs. 3,000/- per month as interim maintenance and a sum of Rs. 5,000/- as expenses for the litigation to the petitioner-wife. On the application of the respondent no.2-husband, the said order was modified by the impugned order dated 2.6.2003. Learned counsel for the petitioner-wife stated that the Principal Judge has had no power to review and therefore the order passed reducing the amount of interim maintenance as well as expenses of the litigation is illegal and without jurisdiction. The petitioner-wife also preferred an application seeking recall of the said order but the same was rejected by impugned order dated 5.2.2004.

Having considered the submission of the learned counsel and the material on record it is evident that the respondent no.2-husband is the only son of his father and he was running a garment factory and he is also an income-tax payee. Later on, the respondent no.2 put forward his defence with the plea that his factory has been closed and at presently he is employed somewhere on a meager salary. The respondent no.2-husband is an able bodied person; has a record of

entrepreneurship and was an income-tax payee. Therefore, there cannot be no doubt that he had the capacity to pay the maintenance as well as the expenses of the litigation to the petitioner-wife to a reasonable extent taking into consideration, the day-to-day needs of these days as well as the expenses of the litigation. Considering all these factors, there cannot be no doubt that the learned Principal Judge, Family Court has improperly reduced the amount of interim maintenance and expenses of the litigation earlier granted by the impugned order dated 2.6.2003. Therefore, the said order need to be set-aside and an appropriate order deserve to be passed so that the petitioner-wife may have reasonable amount for her maintenance and to meet the expenses of the litigation.

Taking note of all the factors, it is directed that the respondent no.2-husband shall pay a sum of Rs. 2,000/- (Rupees two thousand only) per month as interim maintenance and a sum of Rs.4,000/-(Rupees four thousand only) as consolidated expenses of the litigation to the petitioner-wife from the date of the application filed under Section 24 of the Hindu Marriage Act, 1955. If the petitioner-wife has to appear on any date in the court she will be paid further 750/- (Rupees seven hundred fifty only) per day as expenses by the respondent no.2-husband. The arrears, if any, shall be paid within a period of one month from the date of receipt of the copy of this order. in the event of non-compliance of the order, the learned Principal Judge, Family Court may dismiss the suit of the respondent no.2 for dissolution of the marriage.

Therefore, the petition is disposed of accordingly.

Dated 15.3.2004 **(Irshad Hussain, J.)**

Rawat